Department of Health and Human Services
Health Care Financing Administration
Operational Policy Letter #99.095
OPL 99.095

Date: June 21, 1999

To:

M+C Organizations	X
Section 1876 Cost Plans [1]	X
CHPP Demonstrations	
Evercare	X
DoD (TriCare)	X
SHMO I & II	X
PACE	
Medicare Choices	X
Competitive Pricing [2]	X
OFM Demonstrations	
MSHO	
W.P.S.	
HCPPs	
Federally Qualified HMOs	

Subject: **Capacity Limit/"age-in" Reserved Vacancy Guidelines, and Open/Closed Enrollment Rules for an M+CO's Plan(s)**

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[1] *This Operational Policy Letter (OPL) is intended primarily for M+C Organizations and any other demonstration projects for which the Balanced Budget Act (BBA) of 1997 statutory provisions and related regulations are applicable. Some information included in this OPL, therefore, does not apply to Section 1876 cost contractors. For example, Section 1876 cost contractors, per §417.426, must submit a capacity waiver request at least 90 days before the beginning of the open enrollment period and the capacity waiver applies to the entire geographic contract area. Nevertheless, it is anticipated that the 1876 capacity waiver review, approval, and reporting process will mirror the M+C capacity limit process and procedures.*

[2] *Competitive Pricing Demonstration capacity limit requirements and due dates will be specified separately under the demonstration terms and conditions*.

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BACKGROUND - 1876 and M+C

Section 1876 Capacity Waiver and Employer Group "Age-Ins"

The Medicare + Choice (M+C) statute changed the way that risk-contracting managed care organizations can limit their enrollment on capacity grounds. Under the rule that applied to contracts under section 1876 of the Social Security Act (the Act) (42 CFR §417.426), risk and cost contractors could request a **capacity waiver** at any time (90 days before the capacity waiver's effective date), and limit enrollment if such a waiver was granted.

Regulations implementing section 1876 also provided for reserved vacancies for group enrollees. Specifically, they allowed a managed care organization to set aside a reasonable number of vacancies for an anticipated new group contract or anticipated new enrollees under an existing group contract that has its enrollment period at a time during the contract year other than the Medicare open enrollment. (This rule assumes that the managed care organization was not continuously open for enrollment, but was open for 30 consecutive days.)

Note: These rules continue to apply to cost contracts under section 1876.

Medicare + Choice Capacity Limit and Commercial "Age-Ins"

The M+C statute and implementing regulations adopt a different approach to the capacity issue. Under section 1854(a)(1)(B) of the Act and 42 CFR §422.60(b)(1), an M+C Organization (M+CO) may specify a **capacity limit** (if any) for one or all of the M+C plans [3] it offers at the time the Adjusted Community Rate Proposal (ACRP) is submitted.

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[3] *An M+C plan is defined as the health benefits coverage offered under a policy or contract by an M+CO that includes a specific set of health benefits offered at a uniform premium and uniform level of cost-sharing to all Medicare beneficiaries residing in the service area of the M+C plan.* (42 CFR §422.2)

The M+C regulation (§422.60(b)(2)) further states that HCFA may approve the capacity limit submitted for an M+CO's plan(s), and allow an M+CO to limit enrollment into the plan(s) if the specified limit is reached. In addition, §422.66(d)(2) allows an M+CO to **reserve spaces** for individual and employer group commercial members who **"age-in"** to the Medicare product. [4] Therefore, subject to HCFA's approval, an M+CO may set aside a reasonable number of vacancies in order to accommodate "age-in" conversion enrollments from a commercial product to a Medicare plan.

SUMMARY

This OPL provides the M+CO with information about the effect of such enrollment limits and describes the M+CO's request and HCFA's evaluation and approval processes. Because the decision to request a capacity limit may be impacted by the closed enrollment period requirements, this OPL also reviews the enrollment requirements during open and closed enrollment periods. (See attached chart.)

POLICY:

Capacity Limit Submittal Timeframes and Request Considerations

An M+CO must, if it deems that a capacity limit is needed, and other than for the submittal timeframe exceptions shown below, specify a **capacity limit/"age-in" reserved vacancy** [5] for

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[4] *The term "age-in" refers to an M+CO member who converts from a commercial product to the M+CO's Medicare product at the time the member turns age 65 (i.e., becomes eligible). The term "age-in" refers specifically to those M+CO members who initially become entitled to Medicare while enrolled in an M+CO product and does not include all individuals or all employer group members requesting enrollment through an employer group contract. That is, enrollment conversion for seamless continuation of coverage applies to any individual who is enrolled in a health plan offered by an M+CO. (§422.66(d)(2))*

[5] *Whenever the term capacity limit is used it assumes that the reference applies to both capacity limits and "age-in" reserved vacancies.*

one or more of the M+C plans it offers at the time the ACRP is submitted. To do this, during the ACRP development, each M+CO should calculate an upper limit of total Medicare enrollment based on the ability of the M+CO's contracted health services delivery (HSD) network to provide services to members for any one or more of the M+CO's plans.

In addition, in determining the need for a capacity limit, an M+CO should: 1) primarily consider the access and availability of a provider network for Medicare services, 2) take into account other M+COs in the service area, and 3) request a capacity limit on a plan-by-plan basis if the M+CO wishes to limit a plan's enrollment. If no capacity limit is submitted, HCFA assumes that the M+CO will be open for enrollment during the mandatory election periods. (See open and closed enrollment rules.)

HCFA will entertain enrollment limit requests other than those submitted with the ACRP under limited circumstances, such as when: 1) the health and safety of beneficiaries are at risk; or 2) the predominant provider network becomes unavailable to serve the enrollees. Generally the latter would occur due to a cancellation of a provider contract or an unanticipated closure of a provider panel. Capacity limit requests outside of the ACRP process should be submitted 60 days prior to the requested effective date of the capacity limit.

HCFA will consider changes to an approved capacity limit/"age-in" reserved vacancy on a case-by-case basis, as needed.

Service Area

An M+CO may design a plan's area to cover a large or small geographic area, and plans may be offered in full or (where HCFA determines that limited exceptions apply) in partial counties. (Also see OPL99.090, Service Area Requirements for Medicare + Choice Coordinated Care Plans.) HCFA has determined that a capacity limit/"age-in" reserved vacancy must apply to:

1. the full service area associated with a plan, or

2. (where HCFA determines that an exception applies) partial service areas, and

3. all plans offered by an M+CO in the requested area which use essentially the same provider network.

M+COs must, if requesting a capacity limit for a partial service area, justify the circumstances. Reasonable circumstances may include:

1. where there is no impact on the delivery system's enrollment capacity outside of the location where there is a provider capacity problem,

2. rural areas where the capacity limit applies only to a defined set of providers operating in part of a plan's service area, and

3. where there is a self-contained provider network such as a Provider Sponsored Organization or a plan with a distinct health services delivery network.

Criteria must also agree with the requirements in the Service Area OPL99.090.

Effective Periods of a Contract Year Capacity Limit and Enrollment Periods

Both a capacity limit and an "age-in" set aside allow an M+CO to limit the number of enrollees it accepts into one of its plans during any enrollment period. (See attached chart, Scenario 2.) The limit may apply during:

1) a mandatory enrollment period (the November Annual Election Period (AEP), an Initial Coverage Election Period (ICEP), or a Special Election Period (SEP)), and/or

2) the optional Open Enrollment Period (OEP) (the remainder of the contract period).

A capacity limit allows an M+CO to close or limit enrollment during mandatory enrollment periods. Only with an approved capacity limit/reserved vacancy may an M+CO limit enrollment to those eligible: 1) during the November AEP, or 2) because of an ICEP or a SEP. **Only with a reserved vacancy** may an M+CO set aside vacancies for enrollment of conversions, i.e., those members entitled during an ICEP, including employer "age-ins" and nongroup members initially entitled to both Part A and Part B. (Chart - Scenario 2)

Note: A capacity limit will be approved for a maximum of one (1) Medicare contract year or the balance of the Medicare contract year, whichever applies. For example, a capacity limit requested after the November AEP (for enrollments the following Medicare contract year) would, because the AEP has past, only apply to the mandatory election periods that remain, i.e., the ICEP and SEP enrollments. (Chart - Scenario 2) Furthermore, during an optional OEP an M+CO may close its enrollment to all but those beneficiaries eligible because of an ICEP and SEP elections. (Chart - Scenarios 3 and 4)

M+CO Submittal Requirements

M+COs **must, if requesting a capacity limit/reserved vacancy set aside**:

I. In the ACRP, complete Worksheet A, line 16 'Medicare Enrollee Capacity' and line 17 'Non-Medicare Enrollee Capacity'. [6]

[6] *The year 2000 ACRP will be reviewed and approved separately from any capacity limit/reserved vacancy set aside requests. Completion of the capacity limit in the ACRP will serve only as a notice to the Capacity Limit Product Consistency Team (PCT) and will not be a review criteria for ACRP approval.*

II. Separate from the ACRP, submit an enrollment limit/reserved vacancy set aside proposal, to the respective HCFA Regional Office (RO) and the Central Office (CO) Plan Managers, **according to the following elements, as appropriate: (The submittal should be a concise two to three page letter with documentation, as appropriate.)**

1) Identify: the contract(s) and plan(s), each plan's service area, the proposed time period and election period(s) affected by the capacity limit, current enrollment by plan, the requested enrollment limit/reserved vacancy number by plan, and the conditions for lifting/changing the capacity limit,

Note: An overal capacity limit must apply to all plans being offered in the same service area which use essentially the same provider network.

2) Request the limit or set aside for either: 1) the Medicare plan's entire service area, including all geographic areas covered by the benefit plan, as defined in an M+CO's ACRP for any particular plan(s), or 2) with justification, a portion of a plan's service area,

3) Describe how the M+CO will handle the capacity limit and/or reserved vacancy enrollments (e.g., after capacity reached: return applications, wait list, enroll as space available, proposal to deal with unfilled vacancies, etc.),

4) Describe any criteria or conditions necessary for lifting/raising/or changing the capacity limit, or the circumstances under which the capacity limit could be raised, lifted, or otherwise changed, (any conditions will be monitored through reporting), and

5) Provide documentation to demonstrate that the M+CO:

a) cannot expand its provider capacity to meet enrollment needs;

b) cannot, through its HSD network, provide or arrange for the provision of a plan's benefits to enrollees above the capacity limit during the mandatory AEP, and/or for the ICEP and SEP;

c) is not able to provide or arrange for a plan's health care benefits for members after a requested limit;

d) can only accommodate '*x*' number of employer group health plan (EGHP) "age-in" enrollments;

e) cannot provide services through the HSD network for enrollees above the capacity limit, even outside of the contractual arrangements, for the remainder of the Medicare contract period;

Note: M+COs are contractually obligated to provide or arrange for and pay for all Medicare covered services throughout the Medicare contract year. If contracted providers are not available, the M+COs continue to be responsible for providing and paying for all Medicare services.

f) is able to provide services to the existing enrollees;

g) has developed: 1) procedures to handle the capacity limit/"age-in" reserved vacancy process and 2) procedures to show that any unfilled set aside vacancies are, after a reasonable time, made available to other M+C eligible individuals;

h) by having a capacity limit is not disrupting the community patterns of care;

I) by having a capacity limit is not discriminating against certain groups of Medicare beneficiaries; and

j) meets the access and availability requirements within both the area covered by the the capacity limit and for the remaining service area without a capacity limit.

Additional Reporting Process

An M+CO will be required to periodically report information, e.g., quarterly or monthly, to HCFA regarding the capacity limit, plan enrollment, status of the "age-in" reserved vacancy set aside, or related information. Reporting requirements may include information such as: a plan's enrollment, the enrollment progress relative to the limit/set aside, the status of the available or contracted provider network, the progress toward lifting the enrollment limit or set aside, and the status of the unfilled vacancies.

Note: Procedures for enrollment processing during the limited enrollment period will be provided in a separate OPL prepared by the Center for Beneficiary Services. This OPL does not change the standard HCFA notice requirements which apply to an open or closed enrollment period.

HCFA Review Guidelines

HCFA will evaluate each organization's capacity limit and/or "age-in" reserved vacancy request using the following guidelines. HCFA will, at a minimum:

1) evaluate the capacity limit/"age-in" reserved vacancy request as it applies to enrollment rules and the plan(s)' service area and, where necessary, evaluate the justification for a partial service area capacity limit;

2) analyze the HSD network's ability to provide care within the plan's service area and determine whether enrollment above the capacity limit would put beneficiaries' access and availability to services in serious jeopardy without the enrollment limit. That is, the enrollment limit must be directly related to the provider's ability to provide services within the HSD network used for the M+CO's particular plan;

3) ensure that the capacity limit applies to all plans operated by an M+CO in a requested area with essentially the same provider network;

4) review the capacity limit/"age-in" reserved vacancy request to ensure that granting the request does not cause discrimination of beneficiaries (e.g., disadvantage enrollees based on: age, sex, income, race, ethnic origin, disability status, health status, etc.);

5) determine and review any other factors presented by the M+CO which may impact an M+CO's ability to enroll members into a plan(s);

6) establish, after consultation with the M+CO, conditions for lifting/changing the capacity limit/"age-in" reserved vacancy number; and

7) and establish reporting elements and time frames.

HCFA Approval Process

The Capacity Limit PCT, consisting of representatives from both HCFA's Central and Regional Offices, will review the M+CO's request. Approvals will be effective for the maximum of one (1) Medicare contract year. Once HCFA reaches a decision, the Director of the Health Plan Purchasing Administration (HPPA), Center for Health Plans and Providers (CHPP), will notify the M+CO of all enrollment limit/reserved vacancy approvals or disapprovals.

HCFA's review of the ACRP will be conducted as a separate operation and the ACRP review process does not include an evaluation of the capacity limit number. Completion of Worksheet A will serve as a notice for the PCT to expect a capacity limit request.

Contract Year 2000 ACRP Instructions, OPL99.089, and Final Regulation

The ACR/Benefit Information Form 2000 Technical Instructions, dated March 1, 1999, contained instructions for submittal of enrollment limits, but the subsequent OPL99.089 defers to

this Capacity Limit OPL for additional detail guidance. In addition, the final Part C regulation may further address the need for additional opportunities to request enrollment limits during times other than as part of the ACRP process.

Notification and Enrollment Rules during Open and Closed Enrollment Periods

Open and Mandatory Enrollment Period Rules

Beginning January 1999 and through 2001, an OEP is any month or part of a month in 1999 through 2001, during which an M+C plan is open for enrollment. M+C eligible individuals may enroll in an M+CO during the AEP, an ICEP, or a SEP, or during any other period which the M+CO is accepting enrollments (up to the approved limit) in the plan. (See chart, Scenarios 1 and 3.)

Without an enrollment limit/"age-in" set aside, an M+CO must, during all enrollment periods:

- enroll all eligible Medicare beneficiaries on a first-come, first-serve basis;
- process all enrollments in chronological order, by date of receipt of completed enrollment form, and
- process applications in a manner that does not discriminate on the basis of any factor related to health as described in 42 CFR 422.110.

Furthermore, without an enrollment limit/"age-in" set aside, an M+CO **must** enroll all eligible beneficiaries electing M+CO's plans during the November AEP, a SEP, or an ICEP. (See chart, Scenario 1.)

Optional OEP (Chart - Scenarios 3 and 4)

An **optional OEP** is defined as any month other than November through the year 2001 during which an M+CO may limit enrollment into one of its plans by voluntarily closing enrollment. Unlike the mandatory enrollment requirements, M+COs **may voluntarily close enrollment during any portion of the optional OEP.** That is, M+COs **may** accept new enrollments into a plan(s) during any part of the optional OEP, but may also be closed during a portion of the optional OEP. Also, if an M+CO has more than one M+C plan, each of the M+CO's plans is not required to be open during the same time frame. For example an M+CO's plan/plans may be open:

1) only some months (only during March and April),

2) some portion of certain months, and/or

3) during the first 25 days or any other part of each month (January - October and December).

Closed Enrollment Period - (Chart - Scenario 4)

The decision regarding whether a particular M+CO's plan will be open or closed during the optional OEP rests with the M+CO and does not require HCFA's approval prior to making the decision to close enrollment.

Closed Enrollment Rules

Regardless, when an M+CO's plan is closed for enrollment during the optional OEP, there are certain individuals for whom the M+CO must continue to process enrollments **unless an enrollment capacity limit/reserved vacancy set aside is in place.**

- Enrollments which **must** be processed -- (Chart, Scenarios 1 and 4)

  Absent an enrollment limit and an "age-in" set aside, if an M+CO closes enrollment into one of its plans during the optional OEP, it must continue to:

  1) be open for enrollment during the **AEP**;

  2) enroll those individuals electing membership because of a **ICEP** (including group "age-ins") ; and

  3) enroll all **SEP** elections.

  If there is an approved capacity limit or reserved vacancy set aside, an M+CO may also process enrollments up to the limit established under these rules. (Chart, Scenarios 2 and 4)

  Note: During a closed enrollment period in which a M+CO has a reserved vacancy set aside, "**Age-ins" may continue to convert** to an M+CO's plan during the employed individual's ICEP. (Chart, Scenarios 2 and 4) Furthermore, because EGHP open enrollment periods now qualify as a SEP as outlined in OPL99.087), an M+CO may also enroll those employer group members, other than "age-ins", who elect M+CO plans when general enrollment is closed, but an EGHP is open due to the fact that the EGHP's enrollment period qualifies as a SEP. (Chart, Scenarios 1 and 4)

There are certain individuals for whom the M+CO may not continue to process enrollments.

- Enrollments which **may not** be processed (Chart, Scenario 4)

When an M+C plan is closed for enrollment during the optional OEP, an M+CO may **not process enrollments into that plan from any Medicare eligible individual other than those electing the plan under the conditions listed above.**

Closed Enrollment Process

Once an M+CO decides to close enrollment in a plan during an optional OEP, the M+CO must take certain steps to effectuate or change the closed enrollment period. If an M+CO elects to either not accept enrollment for a plan or plans during an optional OEP, or change the closed enrollment period, the M+CO must:

1) notify HCFA in sufficient time to receive HCFA's marketing material approval, and

2) give the general public 30-days advance notice [7] prior to closing enrollment.

For example, if an M+CO intended to offer an M+C plan continuously throughout the contract year, but later decided to close a plan or plans for the remainder of the year, the M+CO must notify the public at least 30 days prior to the date the M+CO will close the plan(s). Also, if an M+CO wishes to change its approved closed/open enrollment time periods, it must follow the same material approval and proper public notification procedures.

The M+CO must work with HCFA to disseminate the information, about either the open or closed enrollment period or the enrollment limit/set aside, to the appropriate partners. For example, HCFA will need to manually ensure that: the Medicare Compare information contains accurate information, those answering the HCFA's 800 phone number have the correct enrollment period information, and the appropriate state and enrollee groups are aware of the enrollment period status and rules. Note: HCFA is working toward an automated solution for keeping the capacity limit and enrollment status information current.

Discrimination between individual enrollees and group enrollees

Other than during an EGHP individual's ICEP or SEP, or with an approved reserved vacancy set aside, an M+CO may not treat EGHP beneficiaries differently from individual beneficiaries.

Future Developments

HCFA will revise this OPL as needed and provide additional materials as they are developed. Suggestions for additional materials include: model public closed enrollment notices, model

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[7] *Public notices must be preapproved by HCFA. Appropriate media for informing the public include general announcements which are posted in a public forum, i.e., at the minimum: a recognized local newspaper. The notice must be published in the same manner, form, and duration as usually used for other M+CO's plan advertisements.*

beneficiary letters to send to applicants when enrollment is closed due to an approved capacity limit, and a standard capacity limit request form.

Effective Date:	Upon publication of this OPL.
Expiration Date:	Upon publication of the Medicare Managed Care Manual, any other OPL specifically designated to replace this OPL, or final regulation.
Contact:	HCFA Regional Office Managed Care Staff, the Product Consistency Team, or the M+CO's RO or CO/HPPA Plan Manager

This OPL applies primarily to M+C contracts; see footnote 1. The 1876 regulatory capacity waiver requirements remain in effect for the 1876 program contractors. This OPL was prepared by the Capacity Limit Product Consistency Team

ATTACHMENT

M+CO ENROLLMENT RULES & REQUIREMENTS
DURING OPEN & CLOSED PERIODS
WITH & WITHOUT CAPACITY LIMITS &/OR RESERVED VACANCY SET ASIDES

Chart indicates which enrollments are required under mandatory and optional open enrollment periods.

<table>
<tr><td colspan="3">ENROLLMENT REQUIREMENTS <u>Legend</u> YES = Enrollment Required; NO = Enrollment Not Allowed</td></tr>
<tr><td>MANDATORY ENROLLMENT PERIODS</td><td></td><td></td></tr>
<tr><td>CAPACITY LIMIT STATUS</td><td><u>NO</u> CAPACITY LIMIT / RESERVED VACANCY SET ASIDE</td><td><u>APPROVED</u> CAPACITY LIMIT / RESERVED VACANCY SET ASIDE</td></tr>
<tr><td>Annual Election Period (AEP) (November)</td><td rowspan="3">(Scenario 1)

ENROLLMENT REQUIRED</td><td rowspan="3">(Scenario 2)

ENROLLMENT REQUIRED, UP TO LIMIT ONLY,
Then
NO FURTHER ENROLLMENT</td></tr>
<tr><td>Initial Coverage Election Period (ICEP):
1. Non-Group Individuals
2. EGHP ‘Age-ins’</td></tr>
<tr><td>Special Election Period (SEP):
1. M+CO Termination
2. Move Out of Service/Cont. Area
3 Contract Violation
4. Marketing Violation
5. Other - EGHP Open Period</td></tr>
<tr><td>OPTIONAL OPEN ENROLLMENT PERIODS</td><td></td><td></td></tr>
<tr><td>ENROLLMENT STATUS</td><td>OPEN</td><td>CLOSED</td></tr>
<tr><td>Non-Group Individuals</td><td rowspan="2">(Scenario 3)

ENROLLMENT REQUIRED</td><td rowspan="2">(Scenario 4)

ENROLLMENT NOT ALLOWED
(Except as shown in Scenario 1 & 2)</td></tr>
<tr><td>EGHP Individuals</td></tr>
</table>

Notes:

AEP - Annual Election Period: November beginning 1999. (§422.68)

ICEP -Initial Coverage Election Period: Includes nongroup individuals and EGHP eligible individuals ("Age-ins") who meet the initial coverage election period requirements. (§422.62)

SEP - Special Election Period: Includes the following situations: (§422.62)

1. HCFA terminates M+CO's contract;
2. Move out of service area or continuation area;
3. M+CO violation of material contract provision;
4. M+CO marketing misrepresentation; and
5. Other exceptional conditions:

   EGHP open enrollment period(s) - per OPL99.087, Use of Special Election Periods for Medicare Beneficiaries in EGHPs.

OEP - Open Enrollment Period - Any period in which an M+CO plan is open for enrollment

Optional OEP -

Optional Open Enrollment Period - A period in which an M+CO may close enrollment, i.e., January through October, and December. (**Without capacity limit** - may close to all <u>but</u> those entitled because of an ICEP or a SEP; **with capacity limit** - may enroll up to capacity limit and then no enrollment allowed.)